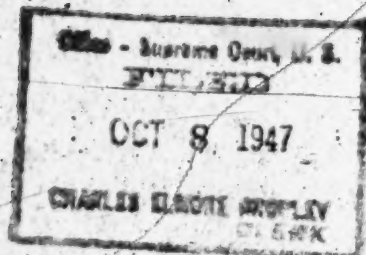


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No. **392**

In the Supreme Court of the United States

OCTOBER TERM, 1947

**FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE
OF THE HOUSING EXPEDITER, PETITIONER**

v.

CHARLES STONE

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH
CIRCUIT**



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STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH
CIRCUIT**

The Solicitor General, on behalf of Frank R. Creedon, Housing Expediter, Office of the Housing Expediter, petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit in the above entitled cause entered on July 28, 1947, affirming a decision of the United States District Court for the Northern District of Ohio.

OPINIONS BELOW

The opinion of the District Court (R. 61-64) is not yet reported. The opinion of the Circuit Court of Appeals (R. 72-76) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 28, 1947 (R. 72). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Does the statute of limitations provided by Section 205 (e) of the Emergency Price Control Act, as amended, run from the time when a tenant pays rent to a landlord who has neglected to file a timely registration statement of his housing accommodations, or from the time that the landlord fails or refuses to obey a retroactive rent reduction order directing him to refund overcharges to the tenant?¹

STATUTE AND REGULATION INVOLVED

The statute and regulation involved are the Emergency Price Control Act of 1942 (56 Stat. 23, 33; 50 U. S. C. App. 901 et seq., as amended by the Stabilization Extension Act of 1944, 58 Stat. 632, 640, 50 U. S. C. App., Supp. V, 901, et seq.) and the Rent Regulation for Housing, as amended (8 F. R. 14663, 10 F. R. 3436). The perti-

¹ In case certiorari is granted, we shall also argue that the Court below erred in finding that a landlord who deliberately disobeys a rent reduction order under the circumstances of this case can be held to have proven that the violation was neither wilful nor the result of a failure to take practicable precautions.

ment provisions are set forth in Appendix A, *infra*, pp. 14-20.

STATEMENT

Respondent, Charles Stone, was the owner of a house situated at 148 West Washington Street, Mooresville, Indiana (R. 15). On or about August 1, 1944, respondent rented these premises to C. F. A. Locke for \$75.00 per month (R. 7). This was the first rental of the premises (R. 9). Section 7 of the Rent Regulation for Housing (*infra*, pp. 19-20) required that a registration statement be filed with the Administrator within thirty days of such first rental; and Section 4 (e) (*infra*, pp. 17-18) provided that this first rental should constitute the prescribed maximum rent until reduced by the Administrator. The purpose of the registration statement is to put the Administrator promptly on notice of the rental of premises not previously rented and registered, and to give him an opportunity to review the rental to determine whether it is excessive. Section 4 (e) likewise provided that if the landlord fails to file a registration statement within such thirty-day period, any rent received from the time of the first renting should be subject to refund to the tenant of any amount in excess of the maximum rent which later might be established by an order issued under Section 5 (c) (1) (*infra*, pp. 18-19), and that such amount should be refunded to the tenant within thirty days after the date of issuance of such an order.

Section 5 (c) (1) authorized the decrease of maximum rents thus established where they were higher than those generally prevailing for comparable housing accommodations on the maximum rent date.

Instead of registering the premises within thirty days after August 1, 1944, as was required by the Regulation upon a first renting, respondent never filed a registration statement. In April 1945, respondent sold the premises to one Henley who, in June 1945, filed a registration statement (R. 10, 12, 21).

On June 28, 1945, the Area Rent Director, acting pursuant to authority vested in him by Section 5 (c) of the Regulation, reduced the rent from \$75.00 to \$45.00 per month, effective from the first rental, and ordered the respondent to refund the excessive amounts collected (\$30.00 for each of nine months) within thirty days thereafter (R. 23-24). Respondent refused to obey this order. The tenant having failed to institute an action under Section 205 (e) of the Act, this suit was instituted by the Administrator on February 1, 1946, for \$810.00, three times the \$270.00 excessive rent which the respondent failed to refund (R. 2-3). After a trial, the court held that the one-year statute of limitations in Section 205 (e) of the Act barred that portion of the Administrator's claim which was based upon failure to refund excessive amounts collected more than a year before the institution of the action, and

awarded damages of \$90.00 based only upon the single amount of the excess rent collected for the months of February, March, and April, 1945, which were within the year prior to the filing of the complaint (R. 63-64). The Circuit Court of Appeals affirmed the judgment (R. 72-76) likewise resting its decision on the ground that the statute of limitations ran from the various times when the landlord collected the rent from the tenant (R. 75), and that the violation was neither wilful nor the result of a failure to take practicable precautions (R. 74-75).

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that the statute of limitations provided by Section 205 (e) of the Emergency Price Control Act runs from the various times on which the landlord collected rent from the tenant, rather than from the date on which the landlord violated the retroactive rent reduction order by his failure to refund the excess rent.

REASONS FOR GRANTING THE WRIT

1: The decision of the court below is squarely in conflict with a subsequent decision of the Circuit Court of Appeals for the Fourth Circuit in *Creedon v. Babcock*, No. 5596, decided August 14, 1947, and printed in Appendix P op. 21-29. In the instant case, the Sixth Circuit Court of Appeals held that "There is no merit in the contention that

the violation upon which this cause of action is based is the failure or refusal to make the refund" (R. 75). In *Creedon v. Babcock*, *supra*, however, where a retroactive rent order was also involved, the Fourth Circuit Court of Appeals ruled directly to the contrary, saying that "Until the last day on which refund could be made in compliance with the O. P. A. order, that is, 30 days after the order was issued, or January 30, 1945, there could be no violation. This must be so since a refund payment prior to that date would have been in full compliance with the order and hence would have given no foundation for suit." A petition for rehearing in the *Babcock* case, based upon the decision of the Sixth Circuit Court of Appeals in the instant case, was denied by the Fourth Circuit Court of Appeals on September 18, 1947.

2. The decision below involves a question of importance to the due administration and enforcement of the Emergency Price Control Act, as amended, and the Housing and Rent Act of 1947. Under Section 1 (b) of the Emergency Price Control Act of 1942, as amended, the provisions of that Act are to be treated as still remaining in force for the purpose of sustaining any suit with respect to offenses committed prior to the termination date of the Act.² Pur-

² See *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U. S. 111; *150 E. 47th Street Corp. v. Porter*, 156 F. 2d 541 (E. C. A.); *Korach Bros. v. Clark*, No. 332, decided July 31, 1947 (E. C. A.).

suant to that provision and the powers vested in him by Executive Order 9841, issued April 23, 1947, effective May 4, 1947 (12 F. R. 2645) and by the Housing and Rent Act of 1947 (Public Law 129, 80th Cong., 1st Sess.), the Housing Expediter is continuing the prosecution of thousands of actions for statutory damages arising out of rent violations committed prior to June 30, 1947, when the Emergency Price Control Act expired. In many hundreds of these cases, as is shown by the analysis below, liability is predicated on the refusal of landlords to obey retroactive orders reducing rents and directing refunds of overcharges to tenants, and a large proportion of these cases would be barred by the period of limitation as construed by the court below.³

³ A search of the records of the Office of the Housing Expediter shows that there are now pending 1,320 cases involving retroactive rent orders. A list of these cases is in the possession of the Solicitor General. In the Cleveland region of the Office of the Housing Expediter, which is roughly coterminous with the region covered by the Sixth Circuit (the Office of the Housing Expediter region includes Michigan, Ohio, Kentucky, Indiana, and West Virginia; the Sixth Circuit, Michigan, Ohio, Kentucky, and Tennessee) there are 141 such cases. In 69 of these, part or all of the action would be barred by the statute of limitations if the decision in the instant case were to stand. Thus, it may be assumed from this sampling that about 650 pending cases throughout the country depend on the determination of the question involved herein.

Under similar circumstances, retroactive rent reduction orders have been and are still being issued by the Office of the Housing Expediter.* If the decision of the Sixth Circuit Court of Appeals is allowed to stand, it would mean that many, if not most, of these actions would be barred in whole or in part by that court's construction of Section 205 (e).

3. a. The plain words of the Act reject the conclusion reached by the court below that the statute of limitations runs from the time that rent is paid rather than from the time the landlord has refused to obey the order to refund.

Section 205-(e) provides in part:

If any person selling a commodity violates a regulation, * * * prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the *violation*, except as hereinafter provided, bring an action against the seller on account of the overcharge. * * * For the purposes of this section the payment or receipt of rent for defense-area housing accommodations

* The Controlled Housing Rent Regulation (12 F. R. 4331), issued under the Housing and Rent Act of 1947 (Public Law 129, 80th Cong., 1st sess.) contains provisions (Sec. 4 (c) and 5 (c)) with regard to the registration of premises and the issuance of retroactive refund orders which are substantially the same as those in the former Regulation involved in this case.

shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation * * * prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under the subsection within thirty days from the date of the *occurrence of the violation* or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same *violation or violations*. * * * [Italics added.]

In applying Section 205 (e) to the instant case, the court below said (R. 75): "There is no merit in the contention that the violation upon which this cause of action is based is the failure or refusal to make the refund. Such a failure or refusal is a violation of § 4 (e) of the Rent Regulation for Housing, and if a refund order is issued by the Administrator, it is a violation of the order; but such failure or refusal is not the violation specified in § 205 (e), which is the violation of the 'maximum price regulation' or order." This construction is erroneous, since Section 205 (e) clearly gives a course of action to a tenant or to the Administrator for a *violation of a regulation*.

or order prescribing a maximum rent *resulting in an overcharge*. If respondent had refunded the excess payments to the tenant, as the order directed, at any time prior to July 29, 1945, there would have been no violation, and no foundation for suit. Hence, since no cause of action accrued until July 29, 1945, it was not possible for the statute of limitations to begin running at an earlier date.

While the landlord's failure to file a timely registration statement for the premises in question violated Section 7 of the Rent Regulation for Housing, such violation did not result in an overcharge to the tenant. At that point, pursuant to Section 4 (e) of the Regulation, the legal maximum rent was still the first rent charged, i. e., \$75.00 per month, subject to modification by the Area Rent Director upon the filing of a registration statement. Not until the Rent Director issued his order of June 28, 1945, reducing the rent retroactively from \$75.00 to \$45.00 per month, did there exist an order prescribing a maximum rent for the premises involved which the respondent violated with a resulting overcharge. The precise time of violation was July 29, 1945, the day after the last day allowed him for refund of the rent overcharges. This is the respondent's only violation of an order establishing a maximum rent for which Section 205 (e) of the Act gives a cause of action. At that point, both violation and overcharge occurred. Until July 29, 1945, neither the tenant nor

the Price Administrator had any cause of action against the respondent based upon such overcharges. Prior to the Rent Director's order establishing retroactively a reduced maximum rent, neither the tenant nor the Administrator could bring an action for overcharges because such overcharges had not occurred.

Thus, the decision of the Circuit Court of Appeals holds in effect that the one-year period of limitation prescribed by Section 205 (e) commences to run before the cause of action given to the tenant, and alternatively to the Price Administrator, comes into existence.⁵ Such an interpretation of Section 205 (e) is clearly erroneous, in that it disregards the established rule that a statute of limitations commences to run only when a cause of action has accrued so that suit may be instituted upon it.⁶ The clear purpose of that

⁵ The lower court relies on *Thierry v. Gilbert*, 147 F. 2d 603 (C. C. A. 1). But in that case, at the time the landlord collected the rent, the lawful maximum rent for the premises had already been fixed by the Rent Regulation at the rent charged on the maximum rent date. Thus, the collection of excessive rent was a violation of the Rent Regulation which would start the running of the period of limitation.

⁶ In an analogous situation, this Court has held that statutes of limitation commence to run on a receiver's cause of action to collect an assessment from the stockholders of an insolvent national bank only from the last day allowed by the Comptroller of the Currency for payment of the assessment as determined by him. *Rawlings v. Ray*, 312 U. S. 96; *Fisher v. Whiton*, 317 U. S. 217; *Cope v. Anderson*, No. 593, last Term, decided June 2, 1947.

section is fulfilled only by construing it literally and logically to mean that under circumstances such as these, the cause of action for damages accrues and the statute of limitations commences to run on the date when the landlord is first in violation of a rent order which establishes the existence of overcharges.

b. In addition, the conclusion reached by the Sixth Circuit is at odds with the established principle that a wrongdoer may not benefit from his own wrong (see, e. g. *Bigelow v. RKO Radio Pictures, Inc.*, 327 U. S. 251; *R. H. Stearns Co. v. United States*, 291 U. S. 54). The retroactive rent reduction order, which must be accepted as valid in these proceedings,⁷ is issued only where a landlord has failed to file a timely registration statement.⁸ By his delay, the fact of renting is concealed from the Administrator and investigation of the premises for review of the maximum rental is postponed. To prevent the landlord from benefiting from his own complete disregard of the Act and the Rent Regulation, the

⁷ *Bowles v. Willingham*, 321 U. S. 503; *Porter v. McRae*, 155 F. 2d 213 (C. C. A. 10); *Bowles v. Lake Lucerne Plaza*, 148 F. 2d 967 (C. C. A. 5), certiorari denied, 326 U. S. 726; *Fleming v. Dashiell*, 161 F. 2d 612 (C. C. A. 9).

⁸ See Section 4 (e) of the Rent Regulation for Housing; cf. *Porter v. Senderowitz*, 158 F. 2d 435 (C. C. A. 3), certiorari denied, 330 U. S. 848; *Porter v. Kramer*, 156 F. 2d 687 (C. C. A. 8); *Martini v. Porter*, 157 F. 2d 35 (C. C. A. 9), certiorari denied, 330 U. S. 848; *Porter v. Eastern Sugar Associates*, 159 F. 2d 299 (C. C. A. 4).

retroactive order requires him to refund to the tenant all overcharges collected during the period of noncompliance. On the theory upheld by the Sixth Circuit, however, the longer the delay or " * * * the more grievous the wrong done, the less likelihood there would be of recovery." *Bigelow v. RKO Radio Pictures, Inc.*, *supra*, p. 265. To allow hundreds of landlords to escape liability under the Emergency Price Control Act and under the Housing and Rent Act of 1947 because of their own inaction or wilful concealment is bound not only to invite disregard of the provisions of the Housing and Rent Act of 1947, but also to breed contempt for law generally.

CONCLUSION

The decision of the court below is in conflict with a decision of another Circuit Court of Appeals. It decides a question of importance to the enforcement and administration of the Emergency Price Control Act and the Housing and Rent Act of 1947. It is clearly wrong. For these reasons, a writ of certiorari should be granted.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

OCTOBER 1947.

APPENDIX A

1. Pertinent Provisions of Emergency Price Control Act of 1942 (56 Stat. 23), as amended by Stabilization Extension Act of 1944 (58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 901, *et seq.*):

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Sec. 205 (e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, *within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1)*

Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than \$25 nor more than \$50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or \$25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation.¹ For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price.² If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such

¹As amended by Sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: " * * * bring an action either for \$50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

²Added by Sec. 108 (b) of Stabilization Extension Act of 1944.

one-year period.² If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.³

2. Pertinent Provisions of the Rent Regulation for Housing, as amended (8 F. R. 14663, 10 F. R. 3436):

Section 2. *Prohibition against higher than maximum rents*—(a) *General prohibition.* Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall demand or receive any rent for or in connection with the use or occupancy on and after the effective date of regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of

³As amended by Sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: “* * * is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. * * *”

the foregoing. Lower rents than those provided by this regulation may be demanded or received.

* * * * *

Section 4. *Maximum rents.* Maximum rents (unless and until changed by the Administrator as provided in section 5, shall be:

(a) *Rented on maximum rent date.* For housing accommodations rented on the maximum rent date, the rent for such accommodations on that date.

* * * * *

(e) *First rent after effective date.* For (1) newly constructed housing accommodations without priority rating first rented on or after the effective date of regulation, or (2) housing accommodations changed on or after such effective date so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations not rented at any time during the two months ending on the maximum rent date nor between that date and the effective date, the first rent for such accommodations after the change or effective date, as the case may be, but in no event more than the maximum rent provided for such accommodations by any order of the Administrator issued prior to September 22, 1942. Within 30 days after so renting the landlord shall register the accommodations as provided in section 7. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

If the landlord fails to file a proper registration statement within the time specified (except where a registration statement was filed prior to

October 1, 1943) the rent received for any rental period commencing on or after the date of the first renting or October 1, 1943, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order. If the Administrator finds that the landlord was not at fault in failing to file a proper registration statement within the time specified, the order under section 5 (c) (1) may relieve the landlord of the duty to refund. Where a proper registration statement was filed before March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator before September 1, 1945. Where a proper registration statement is filed on or after March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator within three months after the date of filing of such registration statement. The foregoing provisions and any refund thereunder do not affect any civil or criminal liability provided by the Act for failure to file the registration statement required by section 7.

* * * * *

Section 5. *Adjustments and other determinations.* In the circumstances enumerated in this section, the Administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required.

* * * * *

(c) *Grounds for decrease of maximum rent.* The Administrator at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable only on the grounds that:

(1) *Rent higher than rents generally prevailing.* The maximum rent for housing accommodations under paragraph (c), (d), (e), (g), or (j) of section 4 is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date.

* * * *

Section 7. *Registration*—(a) *Registration statement.* On or before the date specified in Schedule A of this regulation, or within 30 days after the property is first rented, whichever date is the later, every landlord of housing accommodations rented or offered for rent shall file in triplicate a written statement on the form provided therefor to be known as a registration statement. The statement shall identify each dwelling unit and specify the maximum rent provided by this regulation for such dwelling unit and shall contain such other information as the Administrator shall require. The original shall remain on file with the Administrator and he shall cause one copy to be delivered to the tenant and one copy, stamped to indicate that it is a correct copy of the original, to be returned to the landlord. In any subsequent change of tenancy the landlord shall exhibit to the new tenant his stamped copy of the registration statement, and shall obtain the tenant's signature and the date thereof, on the back of such statement. Within five days after renting to a new

tenant, the landlord shall file a notice on the form provided therefor, on which he shall obtain the tenant's signature, stating that there has been a change in tenancy, that the stamped copy of the registration statement has been exhibited to the new tenant and that the rent for such accommodations is in conformity therewith.

When the maximum rent is changed by order of the Administrator, the landlord shall deliver his stamped copy of the registration statement to the area rent office for appropriate action reflecting such change.

• Section 9, *Evasion*—(a) *General*. The maximum rents and other requirements provided in this regulation shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of housing accommodations, by way of absolute or conditional sale, sale with purchase money or other form of mortgage, or sale with option to repurchase, or by modification of the practices relating to payment of commissions or other charges or by modification of the services furnished with housing accommodations, or by tying agreement, or otherwise.

(b) *Purchase of property as condition of renting*. Specifically, but without limitation on the foregoing, no person shall require a tenant or prospective tenant to purchase or agree to purchase furniture or any other property as a condition of renting housing accommodations.

* As amended by Am. 44, 10 F. R. 330, effective January 10, 1945, which added paragraph (b) and inserted "or by tying agreement" in paragraph (a).

APPENDIX B

United States Circuit Court of Appeals
Fourth Circuit

No. 5596

FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE
OF THE HOUSING EXPEDITER, APPELLANT

v.

E. PAULINE BABCOCK, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES, FOR THE DISTRICT OF MARYLAND, AT BALTI-
MORE(Argued June 19, 1947. Decided August 14,
1947.)Before PARKER, SOPER, and DOBIE, Circuit Judges
DOBIE, *Circuit Judge*:

This is an appeal by the successor to the Price Administrator (hereinafter referred to as O. P. A.) from a judgment of the United States District Court for the District of Maryland, dismissing (except to a limited extent) an action for statutory damages instituted pursuant to Section 205 (e) and Section 205 (a) of the Emergency Price Control Act of 1942, as amended (50 U. S. C. A. App. Sec. 925 (e), (a)) (hereinafter referred to as the Act), for alleged violations of the Rent Regulation for Housing, 7 F. R. 4902, 8 F. R. 7322, as amended 8 F. R. 9020, 9 F. R. 11335, 10 F. R. 2401 (hereinafter referred to as the Regulation). The principal issue on this appeal was raised when Babcock, defendant and appellee, made a motion to dismiss on the grounds that the

statute of limitations barred the suit. The opinion of the lower court may be found in 65 F. Supp. 380.

The material facts are not disputed and may be summarized by a brief chronology. Babcock, owner of a basement apartment, changed the apartment from an unfurnished to a furnished apartment, and rented it as a furnished apartment for the first time on December 14, 1943, fixing a new rental of \$100.00 per month. At that time the controlling Regulation provided:

Maximum rents.—Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:
* * *

(j) *Changed on or after July 1, 1943, or the effective date of regulation, whichever is the later, from unfurnished to furnished.* For housing accommodations changed on or after July 1, 1943, or the effective date of regulation, whichever is the later, from unfurnished to fully furnished, the first rent for such accommodations after such change. The Administrator may order a decrease in the maximum rent as provided in section 5 (c) (1).

Within 30 days after the accommodations are first rented fully furnished, the landlord shall register the accommodations as provided in section 7. If the landlord fails to file a registration statement within the time specified, the rent received from the time of such first renting shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under section 5 (c) (1). In such case, the order under section 5 (c) (1) shall be effective to decrease the maximum rent from the time

of such first renting. The foregoing provisions and any refund thereunder do not affect any civil or criminal liability provided by the act for failure to file the registration statement required by section 7. 8 F. R. 9020, 9 F. R. 11336-7.

Instead of registering the premises within 30 days of December 14, 1943, as required by the Regulation quoted, Babcock delayed 10 months before registering on October 14, 1944.

On November 25, 1944, the Area Rent Director, O. P. A., pursuant to authority contained in Section 5 (c) of the Regulation, reduced the maximum rent for the furnished apartment to \$72.50 per month, effective beginning with "the next regular rent-payment period."

Shortly thereafter O. P. A. notified Babcock that the order would be modified so as to make the reduction in rent retroactive to December 14, 1943 (the first day the apartment was rented furnished). Babcock did not exercise her right, stated in the Notice, to file objection to this proposed modification. Accordingly, on December 30, 1944, a new order was issued, changing the order of November 25, 1944, by making the effective date of the order relate back to the date the apartment was rented furnished. This order also provided:

All rent received by you since the effective date of this order, in excess of the maximum legal rent established hereby, namely \$72.50 per mo., is subject to refund to the tenant. Upon your failure to make such refund within 30 days from the date hereof, the excess payment received will be considered an overcharge within the mean-

ing of Section 205 (e) of the Emergency Price Control Act of 1942, as amended, subjecting you to a damage action in accordance with that section.

Babcock refused to comply with this order of December 30, 1944, directing her to refund the overcharges. The tenant failed to sue and O. P. A. filed a complaint for treble damages. This complaint was filed on September 6, 1945.

Whether there is a statutory limitation barring this suit hinges upon the construction to be given Section 205 (e) of the Act. This Section provides:

If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the *violation*, except as hereinafter provided, bring an action against the seller on account of the *overcharge*. * * * For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under the subsection within thirty days from the date of the *occurrence* of the *violation* or is not entitled for any reason to bring the action, the Administra-

tor may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same *violation or violations*. * * * The amendment made by subsection (b) insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall be applicable only with respect to violations occurring after the date of enactment of this Act. * * * [Italics added.]

It should be noted at the outset that the validity of the order of December 30, 1944, is not before us since that question could not be raised in the court below. *Bowles v. Meyers*, 149 F. (2d) 440; *Porter v. Eastern Sugar Associates*, 159 F. (2d) 299.

Failure to register gave no right to sue and therefore does not govern the limitation period. Compare *Rawlings v. Ray*, 312 U. S. 96. Until the last day on which refund could be made in compliance with the O. P. A. order, that is, 30 days after the order was issued, or January 30, 1945, there could be no violation. This must be so since a refund payment prior to that date would have been in full compliance with the order and hence would have given no foundation for suit. It follows necessarily from the plain and imperative words of the Act—"within one year from the date of the occurrence of the violation"—that the limitation period started the day following January 30, 1945, which was the date of the occurrence of the violation. The lower court so

ruled as to the date of the occurrence of the violation. *Bowles v. Babcock*, 65 F. Supp. 380, 384, and this is in accord with the weight of authority. *Porter v. Butts*, 68 F. Supp. 516; *Haber v. Garthly*, 67 F. Supp. 774; *Porter v. Sandberg*, 69 F. Supp. 29; *Parham v. Clark*, 68 F. Supp. 17; *Fleming v. Schleicher*, U. S. District Court for the District of Maryland, June 4, 1947. But compare *Thompson v. Taylor*, 62 F. Supp. 930.

The court below reasoned further, however, that recovery was limited to the period from September 6, 1944 (one year prior to the date of the complaint) to November 11, 1944 (the date Babcock reduced the rent to \$72.50). To limit recovery from September 6, 1944, correlates the limitation period of the Act to the time when the overcharges were received. In other words, by treating the *violation* as synonymous with and the overcharge period coeval. This, we think, is an erroneous construction of the Act.

It becomes apparent, upon a close reading of the Act, that the word *violation* is used in a sense that is quite separate and distinct from the word *overcharge*. Particularly significant is the first sentence of Section 205 (e) quoted above: "If any person selling a commodity violates a * * * order * * * prescribing a maximum price * * * the person who buys such commodity * * * may, within one year from the date of the occurrence of the *violation* * * * bring an action against the seller on account of the *overcharge* * * * ." *Violation* is used to indicate the point from which the statute

begins to run, whereas *overcharge* indicates the basis of, and the yardstick for, damages.

Appellee challenges this construction by pointing to the history of the Act. It is quite true that Section 205 (e) provided before amendment that suit should be brought within one year after the "rent is paid." That language, of course, favored the defendant in a suit of this sort. Next, the contention is made that there was never any intention on the part of the Congress to tamper with the provisions relating to the limitation period because the legislative committee reports disclose no such intention. See Report of the Senate Committee on Banking and Currency, Sen. Rep. No. 922, 78th Congress, 2d Session, p. 13. The committee reports appear to be entirely silent on this subject. But however persuasive this line of reasoning might be in some situations, it cannot prevail here for it ignores a cardinal rule of statutory construction. There is little or no place for extrinsic aids when a statute employs words that are made plain by the very terms of the statute. *Caminetti v. United States*, 242 U. S. 470. Surely such subjective and nebulous conclusions as might arise from the silence of a committee report must yield to the literal but clear words on the face of the statute. Especially is this true when the result thereby reached is practical. We think the language of the Act makes a clear distinction between *violation* and *overcharge*. We conclude, therefore, that none of the claim here involved is barred by the statute of limitations. This conclusion fully accords with the generally established rule that

a limitation period begins to run only *after* the accrual of the right to prosecute a claim or cause of action. 34 Am. Jur. (Limitation of Action) § 113. There was no such right here until the "occurrence of the violation," and that, as we have pointed out, did not come into being until Babcock refused to comply with the order of December 30, 1944.

Question has also been raised of the lower court's ruling that Babcock was not liable for treble damages. An amendment to Section 205 (e) of the Act provides that treble damages are not to be assessed "if the defendant *proves* that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation." [Italics ours.] We find nothing in the recitation of facts in the complaint from which it could be said as a matter of law that Babcock was entitled to this so-called Chandler defense against treble damages. No evidence was taken below and the case went off on a motion to dismiss. We conclude, therefore, that the lower court was in error in ruling on the question without some kind of hearing. It may be that upon such hearing the facts set forth in the complaint together with evidence of lack of intent to violate the act and evidence of reasonable care in the premises may justify a finding of defendant's right to relief under the "Chandler defense"; but this is a matter to be determined upon the proofs in the further hearing of the case. It should be noted, also, that

whether triple damages are to be assessed is left to the discretion of the trial judge, the language of the statute with regard thereto being "such amount *not more than three times* the amount of the overcharge, or the overcharges, upon which the action is based as the court *in its discretion* may determine." [Italics ours.]

The judgment appealed from is reversed and the cause remanded to the District Court for further proceedings in accordance with this opinion.

Reversed and Remanded.